

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
STATEMENT OF REASONS FOR REGULATORY ACTION
(Pre-adoption Statement of Reasons)

Amend Subsection (b)(91.1) of Section 7.50
Title 14, California Code of Regulations
Re: Klamath River Sport Fishing Regulations

- I. Date of Initial Statement of Reasons: January 2, 2008
- II. Date of Amended Initial Statement of Reasons: March 17, 2008
- III. Date of Pre-Adoption Statement of Reasons: May 27, 2008
- IV. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: February 8, 2008
Location: San Diego, CA
 - (b) Discussion Hearing: Date: March 7, 2008
Location: Stockton, CA
 - (c) Discussion Hearing: Date: April 11, 2008
Location: Bodega Bay, CA
 - (d) Discussion Hearing: Date: May 9, 2008
Location: Monterey, CA
 - (e) Adoption Hearing: Date: June 27, 2008
Location: Ontario, CA
- V. Description of Modification of Originally Proposed Language of Amended Initial Statement of Reasons:

The Department of Fish and Game (Department) is proposing the following recommendations concerning the Klamath River Sport Fishing Regulations:

- 1. The Fish and Game Commission (Commission) adopt the Pacific Fishery Management Council's 2008 recommendation for a Klamath River Fall Chinook (KRFC) harvest quota allocation of 22,500 KRFC for the recreational fishery in the Klamath River System.
- 2. A daily bag of 3 KRFC of which no more than 2 may be over 22 inches when the take of salmon over 22 inches is permitted.

3. A possession limit of 9 KRFC of which no more than 6 may be over 22 inches when the take of salmon over 22 inches is permitted.
4. A daily bag and possession limit of 2 Klamath River Spring Chinook (KRSC) where the take of these fish is permitted in the Klamath River basin.
5. A daily bag of 2 hatchery steelhead or hatchery trout and a possession limit of 4 hatchery steelhead or hatchery trout where the take of these fish is permitted in the Trinity River basin.
6. Repeal of the weekly possession limit (number of fish landed within 7 days) and annual possession limit of no more than 12 Chinook salmon.

VI. Reasons for Modification of Originally Proposed Language of Amended Initial Statement of Reasons:

On April 11, 2008, the PFMC recommended a harvest allocation of 22,500 KRFC for the recreational fishery in the Klamath River basin.

At the May 9, 2008 Commission meeting, the Department presented their recommendations for the proposed range of revisions in the Amended Initial Statement of Reasons, following consultation with fishery shareholder and user groups.

1. The daily bag and possession limits for KRFC are structured to provide a mechanism to allow all anglers to retain three days of fishing limits in possession per fishing trip.
2. The daily bag and possession limits for KRSC are proposed to provide protection for naturally produced KRSC while allowing sport harvest opportunities on the hatchery component of KRSC salmon run in the Lower Klamath River and Upper Trinity River.
3. The daily bag limit and possession limits for hatchery steelhead or hatchery trout are proposed to increase angling opportunity to the general public on Trinity River Hatchery stocks and reduce straying of excess hatchery stocks into natural spawning areas.
4. The weekly possession limit in addition to the annual possession limit of no more than 12 Chinook salmon are proposed to be dropped as these measures are not adequately enforceable and lead to public confusion.

VII. Summary of Primary Considerations Raised in Opposition and in Support:

(1) EB Dugan, In-river Sport Fishing Group, oral comments at March 7, 2008 and May 9, 2008 Commission meeting:

- a. Supports proposed steelhead regulation changes for the Trinity River.
- b. Proposes to reduce steelhead production at Trinity River Hatchery from 800,000 to 500,000,

- c. Stressed need for angler etiquette on upper Trinity River.
- d. Asked for anglers under the age of 16 to be exempt from Steelhead Report card requirements.
- e. Supports proposed regulation of 3 Chinook salmon per day of which no more than 2 may be over 22" and a possession limit of 9 Chinook salmon of which no more than 6 may be over 22".

Response:

- a. Support noted.
- b. Does not fall under the authority of the Commission, production is mitigated through an agreement process between the Department and the U. S. Bureau of Reclamation.
- c. The Commission does not regulate angling behavior.
- d. This comment does not address Klamath inland salmon fishery regulations and cannot therefore be addressed in this particular regulatory procedure. All report cards were modified in 2007 under rulemaking OAL File # 2008-0130-025.
- e. See Response 1a.

(2) Mark Warner, American Fishing Foundation, oral comments at March 7, 2008 Commission meeting:

- a. Commented that Salmon Report Cards are not being used for their stated purposes, harvest analysis of recreational fishery.

Response:

- a. The Department agrees. The Salmon Report Cards were modified in 2007 under rulemaking OAL File # 2008-0130-025 and the additional revenue are slated to be used to analyze the report cards.

(3) Peter Finnie, Chairman, Trinity County Fish and Game Advisory Commission, letter dated March 11, 2008:

- a. Proposes to change the angling season on the South Fork Trinity River to September 1 to March 31.
- b. Supports the increase in daily bag and possession limits for hatchery steelhead and hatchery trout.
- c. Supports the increase in daily bag and possession limits for brown trout instituted by the Commission last year.
- d. Asked for anglers under the age of 16 to be exempt from Steelhead Report Card requirements.

Response:

- a. The Department has proposed an angling season opening November 1 and closing March 31. The season was tailored to protect incidental

take and possible mortality of spring-run Chinook salmon, summer steelhead and fall-run Chinook salmon.

- b. See Response 1a.
- c. See Response 1a.
- d. See Response 1d.

(4) Petey Brucker, President, Salmon River Restoration Council, letter dated April 4, 2008:

- a. Does not support an “open season” for KRSC salmon.
- b. Asks that the Commission initiate creel surveys intended to monitor harvest of KRSC on the anadromous portions of the Klamath River and Trinity River.
- c. Proposes to restrict the take of Chinook salmon from Weitchpec to Iron Gate Dam from January 1 to September 1.
- d. Proposes to restrict the take of Chinook salmon within 500 feet of the mouths of the following watersheds tributary to the Klamath River; Bluff Creek, Camp Creek and the Salmon River from January 1 to September 1.
- e. Asks that the Department mark 100% of all spring-run Chinook produced at Trinity River Hatchery.
- f. Proposed to restrict the harvest of KRSC to those of hatchery origin only, a mark select fishery.
- g. Asks that the Department initiate a Constant Fractional Marking Program on KRSC salmon produced at Iron Gate Hatchery.

Response:

- a. The Department has proposed an angling season for KRSC salmon on the Klamath River downstream of the Highway 96 Bridge at Weitchpec to the Pacific Ocean, opening January 1 and closing on August 15. The proposed daily bag and possession limit is 2 fish. The Department proposes management of this fishery under a general regulation of 2 fish per day and 2 fish in possession.
- b. The Salmon Report Card was modified in 2007 under rulemaking OAL File # 2008-0130-025 and the additional revenue will be used to fund a KRSC salmon creel survey.
- c. Proposed regulations allow the take of Chinook salmon on this section of the Klamath River beginning on August 15. The majority of wild KRSC stocks will have migrated into spawning tributaries by August 15 and will be unaffected by this earlier opening date.
- d. See Response 4c.
- e. Department staff agrees and funding is being sought to accomplish this task.
- f. This may be a possible management scenario providing that 100% of KRSC produced at Trinity River Hatchery are marked.

g. See Response 4e.

(5) Tom Weseloh, California Trout, oral comments at April 11, 2008 and May 8, 2008 Commission meeting:

- a. Supports proposed steelhead regulation changes for the Trinity River.
- b. Proposes to reduce steelhead production at Trinity River Hatchery from 800,000 to 500,000,
- c. Asks that the Department mark 100% of all spring-run Chinook released from Trinity River Hatchery.
- d. Proposes to restrict the harvest of Klamath River Spring Chinook (KRSC) to those of hatchery origin only, a mark select fishery.
- e. Proposed to change the opening date of the angling season on the South Fork Trinity River to October 1.
- f. Agreed to withhold comment regarding April comment 5b pending further data analysis by the Department and a presentation regarding steelhead populations of the Trinity River that will be given to the Commission's June 27, 2008 meeting.
- g. Notified the Commission that the Department had consulted with California Trout regarding April comments 5c and 5d and is satisfied with the Department response he received.
- h. Withdrew comment 5e made at April meeting.

Response:

- a. See Response 1a.
- b. See Response 1b.
- c. See Response 4e.
- d. See Response 4f.
- e. See Response 3a.
- f. Comment noted.
- g. See Response 5f.
- h. See Response 5f

(6) Felice Pace, no affiliation provided, undated letter:

- a. States that is difficult to find out when the Commission meets to deliberate on decisions regarding the Klamath River.

Response:

- a. The Commission process is thoroughly documented and its schedule is available on the web. Proceedings regarding the Klamath River have occurred during the same time frame for the last several years.

(7) Joe Berger, angler, comments received via e-mail correspondence:

- a. Does not support an increase in bag and possession limits of hatchery steelhead or hatchery trout in the Trinity River.
- b. Proposes to restrict the take of Chinook salmon from January 1 to August 31 from downstream of the Bridge at Cedar Flat to the confluence of the Klamath River.

Response:

- a. Hatchery steelhead escapement into the Trinity River has been in excess of 20,000 adults each year over the last 3 seasons. During that same period harvest on those stocks has been very low (under 1,000 individuals annually). The Department's opinion is that increased daily bag and possession limits will not harm this resource.
- b. The Trinity River is closed to the take of Chinook salmon from the confluence of the South Fork Trinity River (SFTR) downstream to the Klamath River from January 1 through August 31 as a conservation measure to protect wild SFTR spring-run Chinook salmon stocks. Increasing the closure to include that section of the river upstream to Cedar Flat will not increase conservation of those stocks.

(8) Frank Galusha, North State Outdoor News Service, comments received via two e-mail correspondence:

- a. Supports proposed steelhead regulation changes for the Trinity River.
- b. Proposes to reduce steelhead production at Trinity River Hatchery from 800,000 to 500,000,
- c. Asked for anglers under the age of 16 to be exempt from Steelhead Report Card requirements.
- d. Supports proposed regulation of 3 Chinook salmon per day of which no more than 2 may be over 22" and a possession limit of 9 Chinook salmon of which no more than 6 may be over 22".

Response:

- a. See Response 1a.
- b. See Response 1b.
- c. See Response 1d.
- d. See Response 1a.

(9) Greg Greenwood, Angler, comments received via e-mail correspondence:

- a. Supports proposed steelhead regulation changes for the Trinity River.
- b. Proposes to reduce steelhead production at Trinity River Hatchery from 800,000 to 500,000,
- c. Asked for anglers under the age of 16 to be exempt from Steelhead Report Card requirements.

Response:

- a. See Response 1a.
- b. See Response 1b.
- c. See Response 1d.

(10) John Harlan, Volunteer Campground Host U S Forest Service, comments received via e-mail correspondence:

- a. Supports proposed steelhead regulation changes for the Trinity River.
- b. Supports proposed regulation of 3 Chinook salmon per day of which no more than 2 may be over 22" and a possession limit of 9 Chinook salmon of which no more than 6 may be over 22".
- c. Proposes to change the boundary of the Lower Klamath sub-basin from downstream of the Highway 96 Bridge at Weitchpec to downstream of the Martins Ferry Bridge with an opening date of September 1.

Response:

- a. See Response 1a.
- b. See Response 1a.
- c. Division of the Klamath River and Trinity River into sub-quota management areas has remained consistent for many years. The fishery in the area between Martins Ferry Bridge and the Highway 96 Bridge at Weitchpec is open to the take of Chinook salmon all year.

(11) Kevin McIlvenna, Angler, comments received via e-mail correspondence:

- a. Supports proposed steelhead regulation changes for the Trinity River.
- b. Proposes to reduce steelhead production at Trinity River Hatchery from 800,000 to 500,000,
- c. Asked for anglers under the age of 16 to be exempt from Steelhead Report Card requirements.

Response:

- a. See Response 1a.
- b. See Response 1b.
- c. See Response 1d.

(12) John Rialon, Angler, comments received via e-mail correspondence:

- a. Supports proposed steelhead regulation changes for the Trinity River.
- b. Supports proposed regulation of 3 Chinook salmon per day of which no more than 2 may be over 22" and a possession limit of 9 Chinook salmon of which no more than 6 may be over 22".

Response:

- a. See Response 1a.
- b. See Response 1a.

(13) Mark Wilkinson, Angler, comments received via e-mail correspondence:

- a. Supports proposed steelhead regulation changes for the Trinity River.
- b. Proposes a daily bag of 1 steelhead, of either wild or hatchery origin, on the Klamath River downstream of Iron Gate Dam to the Highway 96 Bridge at Weitchpec.
- c. Proposes to reduce steelhead production at Trinity River Hatchery from 800,000 to 500,000,
- d. Asked for anglers under the age of 16 to be exempt from Steelhead Report Card requirements.

Response:

- a. See Response 1a.
- b. The Department does not support the take of wild steelhead, a threatened listed species, in any waters of the Klamath River basin.
- c. See Response 1b.
- d. See Response 1d.

(14) Jan Zeiters, Angler, comments received via e-mail correspondence:

- a. Asks the Commission apply conservative harvest management measures to the Klamath River.

Response:

- a. Comment noted.

Informative Digest/Policy Statement Overview

The Klamath River System, which consists of the Klamath River and Trinity River basins, is managed through a cooperative system of State, Federal, and Tribal management agencies. Salmonid regulations are designed to meet natural and hatchery escapement needs for salmonid stocks, while providing equitable harvest opportunities for ocean sport, ocean commercial, river sport, and tribal fisheries.

The Pacific Fishery Management Council (PFMC) is responsible for adopting recommendations for the management of sport and commercial ocean salmon fisheries in the Exclusive Economic Zone (three to 200 miles offshore) off the coasts of Washington, Oregon, and California. When approved by the Secretary of Commerce, these recommendations are implemented as ocean salmon fishing regulations by the National Marine Fisheries Service (NMFS).

The California Fish and Game Commission (Commission) adopts regulations for the ocean salmon sport (inside three miles) and the Klamath River System sport fisheries which are consistent with federal fishery management goals.

Two Tribal entities within the Klamath River System, the Hoopa Valley Tribe and the Yurok Tribe, maintain fishing rights for subsistence fishing and commercial fisheries that are managed consistent with federal fishery management goals. Tribal fishing regulations are promulgated by the Hoopa and Yurok Tribes.

Klamath River Fall-Run Chinook

Klamath River fall-run Chinook (KRFC) salmon harvest allocations and spawning escapement goals are established by the PFMC. The KRFC salmon harvest allocation between tribal and non-tribal fisheries is based on court decisions and allocation agreements between the various fishery representatives.

The annual KRFC river sport salmon quota is recommended by the PFMC and the 2008 PFMC allocation is currently unknown. All proposed closures for adult Chinook salmon are designed to maximize and equitably distribute harvest of adult KRFC salmon while operating within the annual quota.

Klamath River Spring-Run Chinook

The Klamath River System also supports Klamath River spring-run Chinook salmon (KRSC). Presently, KRSC salmon are managed under the general basin seasons, daily bag limits, and possession limit regulations and are not under PFMC allocation management.

KRFC Salmon Quota Management

The 2007 quota for the Klamath River System river sport harvest was 10,600 adult KRFC salmon.

The Commission may modify the KRFC river sport salmon quota which is normally 15% of the non-tribal PFMC harvest allocation. Commission modifications need to meet biological and fishery allocation goals specified in law or established in the PFMC Salmon Fishery Management Plan otherwise harvest opportunities may be reduced in the California ocean fisheries.

The annual KRFC salmon quota is split evenly, with 50% of the quota allocated to the lower Klamath River downstream of the Highway 96 Bridge at Weitchpec and 50% to the remainder of the upper Klamath River System upstream of the Highway 96 Bridge at Weitchpec and the Trinity River Basin. This division ensures equitable harvest of adult KRFC salmon throughout the Klamath River System.

The Spit Area (within 100 yards of the channel through the sand spit formed at the Klamath River mouth), is proposed to close to all fishing after 15% of the Klamath River System quota has been taken downstream of the Highway 101 bridge. This provision only applies if the Department projects that the total Klamath River System quota will be met.

The upper Klamath River System is further divided into three sub-quota areas:

1. 17% from 3,500 feet downstream of the Iron Gate Dam to the Highway 96 bridge at Weitchpec,
2. 16.5% for the Trinity River downstream from Hawkins Bar to the confluence with the Klamath River, and
3. 16.5% for the Trinity River downstream from Old Lewiston Bridge to Cedar Flat.

These sub-quota areas are based upon historical angler effort distribution and ensure equitable harvest of adult KRFC salmon in the upper Klamath River and Trinity River.

Current Sport Fishery Management

The KRFC salmon annual quota is divided into sub areas and the harvest conducted under real-time quota management. The KRSC salmon harvest is managed under the general basin seasons without real-time monitoring due to lack of adequate funds.

The Department presently differentiates the two stocks by following dates with minor sub-area differences to providing equitable harvest opportunities:

1. December 1 through August 15 - General Season (KRSC).
2. August 15 to November 30 - KRFC quota management.

The daily bag limits and weekly possession limits apply to both stocks within the same sub-area and time period.

Proposed Changes

The Department is proposing the following changes to current regulations:

At the May 9, 2008 Commission meeting, the Department presented their recommendations for the proposed range of revisions, following consultation with fishery shareholder and user groups. These recommendations are show below in bold.

Open Season and Bag Limits

The Department proposes combining all of the open season and bag limit language into the regulations table contained in (b)(91.1)(E) to have these important regulations found in one location to reduce public confusion and improve angler compliance.

General Area Closures

The general area closures ending dates are proposed to extend until December 31 to provide additional protection to KRFC salmon still in the system.

KRFC Season, Bag Limit, and Possession Limit

For public notice requirements, a range of KRFC bag and possession limits are proposed until the 2008 basin quota is adopted. As in previous years, no retention of adult KRFC salmon is proposed for the following areas, once the sub quota has been met.

The opening date for the Klamath and Trinity rivers are proposed to be the same for all sub-areas within each river. The Trinity River will open two weeks after the Klamath River to allow for adequate migration time from the ocean. The ending date is proposed to extend until December 31.

The proposed open seasons and range of bag limits for KRFC salmon stocks are as follows:

1. Klamath River - August 15 to December 31
2. Trinity River - September 1 to December 31
3. Bag Limit - **3** Chinook salmon - only **2** fish over 22 inches total length until sub quota is met, then 0 fish over 22 inches total length.

The possession limit is proposed to be 9 Chinook salmon of which no more than 6 Chinook salmon over 22 inches total length may be retained when the take of salmon over 22 inches total length is allowed.

The weekly possession limit in addition to the annual possession limit of no more than 12 Chinook salmon are proposed to be dropped as these measures are not adequately enforceable and lead to public confusion.

KRSC Season, Bag Limit, and Possession Limit

The wild KRSC salmon are primarily limited to two sub-basins of the Klamath River watershed, the Salmon River and the South Fork of the Trinity River (SFTR). The populations of wild spring-run Chinook salmon in these watersheds appear to be at all time lows.

The Department is proposing more restrictive measures to protect wild KRSC salmon outside of the KRFC quota period.

The proposed open seasons for KRSC salmon stocks are as follows:

1. Klamath River - January 1 to August 14
2. Trinity River - January 1 to August 31
 - a. Except for Trinity River main stem downstream from 250 feet below Lewiston Dam to the Old Lewiston bridge - April 1 to August 31
This section of river is designated as wild trout waters.
3. No Chinook salmon may be retained in the following areas:
 - a. Klamath River downstream from Iron Gate Dam to Weitchpec - January 1 to August 14
 - b. Trinity River downstream from the South Fork Trinity River mouth to the confluence with the Klamath River - January 1 to August 31

These closures provide protection for naturally produced KRSC while allowing sport harvest opportunities on the hatchery component of the KRSC salmon run in the lower Klamath River.

The **proposed** bag and possession limits are **2** Chinook salmon of any size and the weekly and annual possession limits are proposed to be dropped to provide additional conservation measures.

South Fork Trinity River Season Change

The Department proposes to change the opening dates for angling on the SFTR and Hayfork Creek from the fourth Saturday in May to November 1. Current regulations allow angling in both of these areas from the fourth Saturday in May through March 31. During this period anglers may take hatchery trout/steelhead and brown trout on the SFTR. There is no take of trout on Hayfork Creek. There is no take of Chinook salmon allowed in either system.

The Department recommends that angling on the SFTR downstream of the Hyampom Bridge to its confluence with the Trinity River and Hayfork Creek from the Highway 3 Bridge downstream to its confluence with the SFTR should be open from November 1 through March 31.

Trinity River Trout Bag and Possession Limits

The Department proposes increasing the daily bag limit to 2 hatchery trout or steelhead and increasing the possession limit to 4 hatchery trout or steelhead on the main stem Trinity River downstream from the Old Lewiston Bridge to the confluence with the Klamath River. This will increase angling opportunity to the general public on Trinity River Hatchery stocks and reduce straying of excess hatchery stocks into natural spawning areas.

Brown Trout Bag Limit Change

Based upon public input and Department data that shows no brown trout distribution outside of the Trinity River, the brown trout bag and possession limits will only apply to the main stem of the Trinity River to reduce public confusion and mistaken identification and take of other salmonids of special concern in areas where the brown trout are not found.

Additional minor changes were made to the regulations for clarity.

On March 14, 2008, the PFMC developed three 2008 season options for public review that allowed a range of harvest quotas from 27,100 to 27,400 for the Klamath River Sport Fishery. The ISOR was amended to increase the upper bound of harvest quota and provide an increased bag and weekly possession limits for additional harvest opportunities. The final PFMC regulation recommendations will be made on April 11, 2008 in Seattle, Washington.

On April 11, 2008, the PFMC recommended a harvest allocation of 22,500 KRFC for the recreational salmon fishery in the Klamath River basin. The Department recommends that the Commission adopt the PFMC KRFC harvest quota allocation.